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In re Application of :
Begg, Michael Colin :
Appl. No.: 10/812,917 : DECISION ON PETITION
Filed: Mar. 31, 2004 :
For: MANUFACTURE OF SHIM WINDINGS :

This is a decision on the petition filed on May 16, 2008 by which petitioner request withdrawal of the finality of the Office action dated May 12, 2008. The petition is considered pursuant to 37 CFR 1.181 and no fee is required.

The petition is granted.


In the petition, petitioner argues that in response to the Appeal Brief filed on Feb. 6, 2008, the examiner re-opened prosecution by issuing a final rejection with new grounds on May 12, 2008, which was not necessitated by any amendment. In particular, petitioner argues that the last amendment was presented pursuant to 37 C.F.R. § 1.116 on May 15, 2007 which amendment was only to claim 7 for the purpose of obviating a ground of formality-based objection made in the final Office Action dated Feb. 15, 2007. In essence, petitioner argues that the second final rejection of May 12, 2008 was not necessitated by any amendment to the claims and only necessitated by the appeal brief of Feb. 6, 2008.

While the examiner states that new grounds of rejection were necessitated by amendment filed on Aug. 3, 2006, it is noted that certain grounds of rejection with respect to the applied references remain the same, i.e., the combination of Heke '214 and AAPA, as in the non-final rejection mailed Feb. 14, 2006. However, the application of new references, US Pat. 6,175,237 to Doty and U.S. Pat. 6,615,481 to LaPlante, in the latest final rejection of May 12, 2008, clearly indicates that the references were necessitated by the appeal brief rather than previously amendment.

In finding petitioner's points of argument persuasive, the requested relief is granted. The finality of the last Office action mailed May 12, 2008 is hereby withdrawn and the period to respond remains unchanged. The examiner has been directed to treat the next applicant's response to the Office action of May 12, 2008 as 37 CFR § 1.111 amendment.

This application is being returned to the SPE of Art Unit 3729 waiting for applicant's response to the last Office action. Should petitioner have any further questions, he is invited to contact Henry Yuen, Special Programs Examiner, at (571) 272-4856.

PETITION GRANTED.



Frederick R. Schmidt, Director
Technology Center 3700